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8
9 MICHAEL LADUE, and AMANDA }
10 LADUE, }
11 v. }
12 KETTLE FALLS INTERNATIONAL }
13 RAILWAY LLC, and OMNITRAX, }
14 INC., }
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Plaintiffs,

Defendants.

Case No. 2:21-CV-00205-MKD

**PLAINTIFFS' OBJECTIONS
TO DEFENDANTS' AMENDED
EXHIBIT LIST**

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

Plaintiffs Michael LaDue and Amanda LaDue by and through their attorneys of record, object to Defendants' Exhibit List, ECF No. 212, as follows:

No.	Description	Objection
1001	LaDue eRailSafe System Badge	FRE 403 and Plaintiffs' MIL #9 ECF No. 171. Mr. LaDue's work badge contains the word "contractor" in large red font and refers to All American Track as Mr. LaDue's "primary employer." The badge is not probative of any issues in dispute and will likely cause unfair prejudice and confuse the jury in their determination as to whether Mr. LaDue was an employee of the railroad.
1002	AAT-KFR Services Agreement	FRE 403 and Plaintiffs' MIL #9 ECF No. 171. The services agreement refers to AAT as "contractor" and "subcontractors." These words are not probative of any issues in dispute and will likely cause unfair prejudice and confuse the jury in their determination as to whether Mr. LaDue was an employee of the railroad.
1005	OmniTRAX Worker On-Track Safety Program	FRE 403 and Plaintiffs' MIL #9 ECF No. 171. The document refers to "company," "contractor," "employees," "employer" and "personnel" throughout the document. These words are not probative of any issues in dispute and will likely cause unfair prejudice and confuse the jury in their determination as to whether Mr. LaDue was an employee of the railroad.

No.	Description	Objection
1006	Brady Peters memo	FRE 801. Peters' memo is hearsay and no exceptions apply.
1007	Willey incident report	FRE 801. Willey's memo is hearsay and no exceptions apply.
1008	Peters Investigation report	FRE 801. Peters' investigation report is hearsay and no exceptions apply.
1009	Willey handwritten statement	FRE 801. Willey's handwritten statement is hearsay and no exceptions apply.
1010	KFR Timetable #7	FRE 403. The timetable was not in effect at the time of the incident and was superseded by timetable #8.
1012	KFR Timetable #8	FRE 403. The corporate safety policy on page 2 is not probative of whether Defendants provided Mr. LaDue with a reasonably safe workplace and will likely cause unfair prejudice and confuse the jury in their determination of the issue.
1013	OmniTRAX Special Instructions	FRE 403 and Plaintiffs' MIL #9 ECF No. 171. The document uses the word "contractors." This word is not probative of any issue in dispute and will likely cause unfair prejudice and confuse the jury in their determination as to whether Mr. LaDue was an employee of the railroad.

No.	Description	Objection
1015	OmniTRAX Air Brake and Train Handling Rules	FRE 403. These rules are not relevant to any issues in dispute in the case and will likely waste time.
1016	SafeTRAX	FRE 403 and Plaintiffs' MIL #9 ECF No. 171. The corporate safety policies on pages 4-6 are not probative of whether Defendants provided Mr. LaDue with a reasonably safe workplace and will likely cause unfair prejudice and confuse the jury in their determination of the issue. The document also refers to "contractors." This word is not probative of any issue in dispute and will likely cause unfair prejudice and confuse the jury in their determination as to whether Mr. LaDue was an employee of the railroad.
1017	OmniTRAX Worker On-Track Safety Program	Duplicate of 1005, which is objected to above.

No.	Description	Objection
1019	LaDue Phone Bill	FRE 403 and Plaintiffs' MIL #1 ECF No. 171. Mr. LaDue's cell phone usage is not relevant to any issue in dispute because Mr. LaDue was not on his phone in the 20 minutes before the incident. Evidence that Mr. LaDue was on his cell phone earlier that day is a prior bad act which is inadmissible to show he was on his cell phone at the time of the incident. This evidence is highly prejudicial and is likely to confuse the jury in their determination of Mr. LaDue's liability.
1020	AAT Letter to LaDue regarding light duty	FRE 801. AAT letter is hearsay and no exceptions apply.
1021	AAT letter to LaDue regarding weight restriction	FRE 801. AAT letter is hearsay and no exceptions apply.

No.	Description	Objection
1026	Mr. LaDue's text messages	FRE 403 and Plaintiffs' MIL #1 ECF No. 171. Mr. LaDue's cell phone usage is not relevant to any issue in dispute because Mr. LaDue was not on his phone in the 20 minutes before the incident. Evidence that Mr. LaDue was on his cell phone earlier that day is a prior bad act which is inadmissible to show he was on his cell phone at the time of the incident. This evidence is highly prejudicial and is likely to confuse the jury in their determination of Mr. LaDue's liability.
1027	Dr. Cwik's medical records	FRE 403, 801 and Plaintiffs' MIL #12 ECF No. 171. Dr. Cwik's medical records are hearsay and no exceptions apply. Dr. Cwik is a witness and will testify about his treatment of Mr. LaDue. The medical records are cumulative and will likely confuse the jury. Plaintiffs do not object to using the records as demonstratives or shown to medical witnesses on the stand.
1028	Labor & Industries APF Form	FRE 403, 801 and Plaintiffs' MIL #7 and #12 ECF No. 171. This medical record was signed by Dr. Cwik and should be excluded for reasons set forth in objection to exhibit 1027 and also is an L&I form and should be excluded pursuant to the collateral source rule.

No.	Description	Objection
1029	Imaging Report 5-21-14	FRE 403, 801 and Plaintiffs' MIL #7 and #12 ECF No. 171. This medical record predates the accident by more than 4 years and contains records related to a joint leg length study of Mr. LaDue. This issue is not relevant here because Mr. LaDue's legs are not at issue and Defendants do not have a qualified expert to testify regarding any alleged preexisting injury related to Mr. LaDue's legs.
1030	Surveillance video	FRE 602, 901. Defendants must use a witness to authenticate and lay foundation for this video. Plaintiffs also allege the video should be excluded because the surveiller violated RCW 9A.52.080 Criminal trespass in the second degree and RCW 9.73.030 Intercepting, recording or divulging private communication without consent.

DATED: November 27, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November 2023, I electronically filed the foregoing **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' AMENDED EXHIBIT LIST** with the Clerk of the Court using CM/ECF System which will send notification of such filing to the following:

Rylan Weythman: rylan.weythman@foster.com

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I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

No manual recipients

By: s/ Scott H. Levy

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